

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 08-CR-00076 (JBW)

-against- : U.S. Courthouse

: Brooklyn, New York

FRANK CALI

Defendant : August 7, 2008

- - - - - X 10:30 a.m.

BEFORE:

HONORABLE JACK B. WEINSTEIN
United States District Judge

APPEARANCES:

For the Government: BENTON J. CAMPBELL, ESQUIRE
United States Attorney
271 Cadman Plaza East
Brooklyn, New York 11201
BY: JOEY LIPTON
EVAN NORRIS
Assistant U.S. Attorneys

For the Defendant: HARLAN J. PROTASS
305 Madison Avenue
Suite 1301
New York, New York 10165

Court Reporter: RONALD E. TOLKIN, RMR
Official Court Reporter
225 Cadman Plaza East
Brooklyn, New York 11201

Minutes Taken Stenographically. Transcript Produced
By Computer Aided Transcription.

1 LAW CLERK: Criminal cause for sentencing,

2 U.S.A. versus Frank Cali.

3 Appearances for the Government.

4 MR. LIPTON: Joey Lipton for the Government.

5 Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. PROTASS: Harlan Protass for Mr. Cali.

8 Good morning, Your Honor.

9 PROBATION OFFICER: Sindee Haasnoot on behalf of the
10 U.S. Probation.

11 THE DEFENDANT: Hello, Your Honor.

12 THE COURT: Swear the defendant, please.

13 LAW CLERK: Sir, please stand up and raise your
14 right hand.

15 (Defendant sworn to tell the truth by the law
16 clerk.)

17 THE DEFENDANT: Yes.

18 LAW CLERK: Please state your name.

19 THE DEFENDANT: Frank Cali.

20 THE COURT: Okay. Is there a family member present?

21 MR. PROTASS: His brother-in-law is present, Your
22 Honor. That's the only family member. His wife is at home.

23 THE COURT: That is the only family present.

24 Do you want your brother-in-law with you?

25 THE DEFENDANT: That's fine, Your Honor.

1 THE COURT: Yes or no?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Have him come up.

4 (Whereupon, the brother-in-law takes a seat at
5 counsel table.)

6 THE COURT: Have you read the presentence report and
7 had it explained by your attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you ready to be sentenced?

10 THE DEFENDANT: Yes.

11 THE COURT: What country are you a citizen?

12 THE DEFENDANT: U.S.A.

13 THE COURT: You may not be deported.

14 Are you satisfied with your attorney?

15 THE DEFENDANT: Yes.

16 THE COURT: Does the attorney have a conflict?

17 MR. PROTASS: No, I don't, Your Honor.

18 THE COURT: Any unresolved motions or contentions?

19 MR. LIPTON: I don't believe any motions or
20 contentions, but Mr. Protass did file a motion on behalf of
21 Mr. -- a letter on behalf of Mr. Cali this morning. I wanted
22 to make sure that Your Honor had an opportunity to see that.

23 THE COURT: Do you want it sealed?

24 MR. PROTASS: Sir?

25 THE COURT: Do you want it sealed?

1 MR. PROTASS: Yes, Your Honor. If possible.

2 THE COURT: All right. The letter is sealed.

3 August 7, 2008.

4 Are you seeking a downward departure?

5 MR. PROTASS: No, Your Honor.

6 THE COURT: Anybody object to a video recording?

7 MR. PROTASS: No, Your Honor.

8 MR. LIPTON: No, Judge.

9 THE COURT: Both sides used the proper guidelines
10 manual?

11 MR. PROTASS: Yes, Judge.

12 MR. LIPTON: Yes, Judge.

13 THE COURT: The Court observes the defendant's
14 demeanor. He appears to be capable of understanding these
15 proceedings.

16 Does counsel agree?

17 MR. PROTASS: Yes.

18 THE COURT: We have no victim's statement?

19 MR. LIPTON: Judge, we don't have a victim
20 statement, no.

21 THE COURT: Sir, would you look at the manuscript
22 here, January -- June 3rd, 2008. It is a transcript of the
23 pleading before Judge Levy. This is Court Exhibit 1.

24 Is that accurate?

25 THE DEFENDANT: Yes.

1 THE COURT: Was what you said there truthful?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did anybody make any threats or promises
4 to you?

5 THE DEFENDANT: No.

6 THE COURT: Was it entirely voluntary?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you still wish to plead guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: How do you plead, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Based on the information before me I
13 accept the plea.

14 Do you want a Fatico hiring?

15 MR. PROTASS: No, Your Honor.

16 THE COURT: Do you want a jury hearing on any issue?

17 MR. PROTASS: No, Your Honor.

18 THE COURT: You may address the Court yourself. You
19 may have witnesses, and your attorney will address the Court.

20 Do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you wish to challenge anything in the
23 presentence report?

24 MR. PROTASS: Yes, we do, Your Honor.

25 There are a few points. The first is in

1 Paragraph 2, dealing with the global resolution. The PSR does
2 not count for that document. I believe that Your Honor has an
3 accounted for that in the guidelines calculation for other
4 defendants who have been sentenced in this matter.

5 THE COURT: What is the Government's view?

6 MR. LIPTON: That the global disposition is
7 appropriate under the circumstances, Your Honor,
8 notwithstanding the probation's well-written opinion.

9 THE COURT: Your view it is not to be included in
10 the global disposition?

11 PROBATION OFFICER: Yes.

12 THE COURT: I agree with the Government and the
13 defendant. The defendant will get three points off. That
14 will bring it down to 19 from 22; is that correct?

15 PROBATION OFFICER: Yes, Your Honor.

16 THE COURT: Anything else?

17 MR. PROTASS: Yes.

18 Throughout the PSR, and there are many, many
19 paragraphs that refer to the offense conduct of all of the
20 other defendants in this matter. We object to the inclusion
21 of all of the other offense conduct as it doesn't relate to
22 Mr. Cali and it is not relevant in terms of the BOP's
23 consideration of the PSR. To the extent that Your Honor
24 imposes an incarceratory sentence it would be highly
25 prejudicial to him.

1 And that is -- those are in Paragraphs 4 to 95 --
2 95 -- 99 to 134 and 136, as well as Paragraph 137 and 139 to
3 the extent that they refer to defendants other than Mr. Cali.

4 THE COURT: Paragraphs what?

5 MR. PROTASS: I'm sorry.

6 4 to 95, 99 to 134, and 136. And Paragraphs 137 and
7 139 in part refer to Mr. Cali, and we have no objection to
8 that, but they refer, like the other enumerated paragraphs do,
9 to all of the other defendants.

10 And this was -- I set this forth in the objections
11 letter that I sent to the Probation Department. It was at the
12 beginning of this week or the end of last week.

13 PROBATION OFFICER: August 4th.

14 MR. PROTASS: August 4th.

15 THE COURT: You can produce evidence as to these?

16 MR. PROTASS: Yes. Yes, sir.

17 THE COURT: As to the presentence report, the fourth
18 paragraph, the following:

19 In Paragraph 4 to 95, 99 to 134, 136, and 137 and
20 139 affirmed other defendants. There is involved evidence
21 that the Government can produce but that does not apply
22 directly to this defendant, Mr. Cali.

23 MR. LIPTON: Judge, there is one caveat.

24 Paragraph 17 does apply to Mr. Cali. That is the
25 only one included in those paragraphs.

1 THE COURT: 4 to 16 and 18 and 95 it should read?

2 MR. PROTASS: That is correct, Your Honor.

3 THE COURT: Okay.

4 PROBATION OFFICER: What do you want me to add, Your
5 Honor? I know the paragraph numbers but I need the wording
6 you want me to add or do you want it stricken?

7 THE COURT: No.

8 In Paragraphs 4 to 16, and 18 to 95, 99 to 134, 136
9 and 137 and 139, referring to other defendants there is
10 involved evidence the Government can produce, but does that
11 not apply directly to Mr. Cali.

12 PROBATION OFFICER: Okay, Your Honor.

13 THE COURT: Otherwise, the report will be amended as
14 to that.

15 Anything else?

16 MR. PROTASS: Just one small matter, which is
17 Paragraphs 17 and 140 that refer to Mr. Cali as an acting
18 captain of the Gambino family.

19 THE COURT: Okay.

20 MR. PROTASS: 17 and 140.

21 Your Honor, Mr. Cali was not charged in Count 1 of
22 the indictment, which was the RICO enterprise count, and we
23 think that the allegations of Mr. Cali being an acting captain
24 is inappropriate in the PSR in light of that charge -- or
25 absent that charge.

1 THE COURT: Do you have proof of that?

2 MR. LIPTON: Yes, Judge. We alleged that in the
3 indictment.

4 THE COURT: Well, if you want a trial, I will give
5 you a trial. Otherwise, it will remain.

6 MR. PROTASS: We don't want a trial, Judge.

7 THE COURT: Then it remains.

8 MR. PROTASS: All right.

9 THE COURT: Any other findings of fact or law before
10 we begin?

11 MR. LIPTON: Not from the Government.

12 MR. PROTASS: Not from the defense, Your Honor.

13 THE COURT: The calculation is now correct at 19
14 with a criminal history category of what?

15 MR. PROTASS: Well, actually, Your Honor, we had
16 contested the two points for express or implied threat, and we
17 have also --

18 THE COURT: Well, then, let's hear it.

19 MR. PROTASS: Okay. We had also contested the --

20 THE COURT: Well, let's deal with the expressed or
21 implied threats.

22 What is your view?

23 MR. PROTASS: My view, Your Honor, actually reflects
24 and we believe that it does not apply for the same reasons
25 that Your Honor found in the July -- I believe it was the

1 sentencing of Louis Filippeli, as well as the sentencing of
2 Mario Cassarino.

3 THE COURT: This is Number 4 that we are dealing
4 with?

5 MR. LIPTON: Probably around there, Your Honor, yes.
6 The other people had the option to -- or the ability, rather,
7 to challenge the implied threat. I think this may be the
8 third.

9 THE COURT: This is the informant, Number 4?

10 MR. LIPTON: Yes, Judge. Yes. It is the same issue
11 that Your Honor has addressed were these three other
12 defendants.

13 THE COURT: All right. No, I am not going to have
14 the same findings here. This person is heavily involved in
15 the mob. Anything that he did or said was freighted,
16 f-r-e-i-g-h-t-e-d, with implications of coercion.

17 What paragraph is that?

18 PROBATION OFFICER: Paragraph 143, Your Honor.

19 THE COURT: No. I think this is a mob-related
20 activity. In this case it is to be applied.

21 MR. PROTASS: Your Honor, my client has had
22 absolutely no contact with Mr. -- the John Doe Number 4. He
23 never spoke with him. He never met --

24 THE COURT: Well, what -- who did he have contact
25 with?

1 MR. PROTASS: He had contact -- according to the
2 allegations and the tapes, he had contact with -- in the
3 NASCAR conspiracy is the only thing that my client charged
4 with.

5 THE COURT: This is NASCAR.

6 MR. PROTASS: No. This is just NASCAR.

7 THE COURT: Okay.

8 MR. PROTASS: Just NASCAR.

9 My client was alleged to have been asked by one of
10 his codefendants, Domenico Cefalu, to ask another one of his
11 co-defendants, Ernest Grillo, about a company called
12 Interstate, which at the time was working on the NASCAR site.
13 He made that request and asked about interstate, but what was
14 interesting, Your Honor, is that Interstate had nothing to do,
15 so far as I can tell, with the NASCAR conspiracy.

16 There was -- the arrangement that my client was
17 involved with was that -- and this is based on what is set
18 forth in the Government's presentence -- in the Government's
19 detention memo and the Government's sentencing memo, as well
20 as in the presentence report; that there was an arrangement
21 whereby one of Mr. Cali's co-defendants obtained the exclusive
22 dumping rights to dump fill at the NASCAR cite. And those
23 exclusive dumping rights were given to John Doe Number 4,
24 Mr. Valero, in exchange for a percentage of the profit that he
25 made.

1 At the end of the day, the person who obtained the
2 exclusive dumping rights that were transferred to Valero lost
3 the contract. So no fill was dumped pursuant to that
4 contract.

5 The Government then alleged that later a new deal
6 was worked out. That new deal was something that Valero got
7 on his own, and he paid certain of Mr. Cali's co-defendants
8 but not Mr. Cali. In fact, the Government's sentencing
9 memorandum says that Mr. Cali was cut out of the deal. He was
10 not a part of the deal that was, for lack of a better word,
11 successful. There was no threat to Mr. Valero in connection
12 with the first deal in which my client was involved because he
13 obtained something in exchange for what he got and what he --
14 the threat was that he would not get this work if he did not
15 share the profits because he was getting something. He had to
16 give something in return.

17 And as I said, Your Honor, he had no contact with
18 Mr. Valero whatsoever, never met him and never spoke to him,
19 and it was not captured on the hundreds of hours of tapes that
20 the Government produced in this case. My client's voice
21 doesn't appear. He is not on any of the tapes.

22 So I think that the two-point enhancement for threat
23 simply does not apply, and it should not apply in this case.

24 MR. LIPTON: Your Honor, I will disagree. We
25 disagreed with, in general, the implied threat as it relates

1 to the Gambino family, but in particular to this individual
2 who is an acting captain, and without it going through this
3 individual, the extortion of John Doe Number 4 would not have
4 taken place, so....

5 THE COURT: Were the people that were actually in
6 contact with Number 4 under the control of this defendant?

7 MR. LIPTON: Yes, Judge. They actually had to clear
8 it and make sure that Mr. Cali was okay with the deal because
9 he had to get a piece of it. The defense counsel would like
10 to have it where there was two different deals, where one
11 collapsed and the other resurrected, but --

12 THE COURT: I don't think that is relevant. The
13 fact that there was one deal and contemplation is sufficient.

14 MR. PROTASS: Your Honor, the one defendant who had
15 the primary contact with the cooperating witness here, as
16 we pointed out in our sentencing memorandum there are repeated
17 instances where they have a -- where the tapes, the actual
18 evidence demonstrates a close, personal, very cordial
19 relationship where they're sharing meals, where the
20 Government's cooperating witness tells this individual who is
21 having some surgery that if there is anything that I can do
22 for you after you have the surgery just give me a call. Tells
23 him if there is anything, anytime you need me to take you
24 someplace --

25 THE COURT: That doesn't cut much ice with me.

1 These people are all sycophants.

2 Is that a word? Do you know how to spell it?

3 They are all on their knees to the gang. And if it
4 has to be cleared up the ladder, as it does in these cases,
5 then it is implicit with threat.

6 MR. PROTASS: The threat here, Your Honor, was that
7 he simply would not get the work at the NASCAR center.

8 THE COURT: No. The threat was that when he got the
9 work with the help of the mob, if he didn't pay, he was going
10 to be in physical or economic trouble or both.

11 I can't see your argument in this case. Now, there
12 is a problem, which I point out to you. He is accused, is he
13 not, of threats? Isn't he?

14 MR. LIPTON: Well, under 1951 he is accused pursuant
15 to that statutory provision with being a conspirator to
16 implied threats which involved economic harm and also the
17 enticed threats of physical harm.

18 THE COURT: That's right.

19 And it is an interesting double counting problem --

20 MR. PROTASS: I saw Your Honor's order this morning.

21 THE COURT: -- when the conspiracy is to use threats
22 and the charge is that he -- under the guidelines, at least,
23 that he used the threats of double counting. It is an
24 interesting problem. I am not sure that it has any validity
25 here because the implied threat is an actual implied threat;

1 the conspiracy is a conspiracy. There are two different
2 matters.

3 So to that extent it isn't double counting. It is
4 a conspiracy to use a threat, and then it is the use of the
5 threats under the guidelines. So it is an interesting
6 problem. It is kind of obtuse, and you may want to take an
7 appeal.

8 But I am not going to give you less than two points
9 under Paragraph 143. If you can, I can change the sentence
10 that I was going to make, but I am not inclined to do so in
11 this case as I was in the other cases.

12 What else?

13 MR. PROTASS: Well, there is the one-point
14 enhancement that is in the presentence report for the amount
15 of money at issue here, Your Honor, and --

16 THE COURT: Well, that, I don't see. What's --
17 where is the loss?

18 MR. LIPTON: There is the loss of \$13,000 that was
19 paid pursuant to this conspiracy so that --

20 THE COURT: Paid to whom?

21 MR. LIPTON: This was paid to individuals, Leonard
22 DiMaria, Ernest Grillo, and Nicholas Corozzo, based on the --
23 once the cooperating witness, John Doe Number 4, got the
24 rights to dump at the site.

25 THE COURT: This is the NASCAR?

1 MR. LIPTON: This is the NASCAR site; correct, Your
2 Honor.

3 He then was required to makes these payments.

4 THE COURT: He paid them?

5 MR. LIPTON: Yes, he did, Your Honor.

6 MR. PROTASS: It was not paid to my client, Your
7 Honor.

8 THE COURT: It doesn't make any difference.

9 MR. LIPTON: Right.

10 THE COURT: If it is a conspiracy, he is
11 responsible.

12 MR. PROTASS: I point out that, you know, I think it
13 is important that we -- we define these two deals which are
14 characterized by the Government. You know, the first deal is
15 where one of Mr. Cali's codefendants got Mr. Valero, the
16 cooperating witness, to dump work, and Mr. Valero shared --
17 agreed to share in the profits in exchange for doing that. No
18 work was actually done on that deal. And Valero, the
19 cooperating witness, made no payments on that deal. The deal
20 fell apart.

21 According to the Government's own narrative of the
22 offense here, later -- and I am quoting, later the new deal
23 was worked out. The Government itself refers to it as a new
24 deal, and the Government says that my client was cut out of
25 that new deal.

1 THE COURT: What was the 13,000 paid, for the first
2 or the second deal?

3 MR. PROTASS: The second deal in which my client was
4 cut out of.

5 MR. LIPTON: It wasn't dealt the same way. It
6 wasn't two separate deals. It is not a continuous course of
7 action. He is negotiating this to get this from the Gambino
8 family. He has to go through Mr. Cali and others at first,
9 and then it shifts up as to who is to pay, but if he's part of
10 the conspiracy, it is not an improper joinder of two different
11 conclusions.

12 THE COURT: Four ultimately got the dumping rights
13 and began to dump, didn't he?

14 MR. LIPTON: Correct, Judge.

15 MR. PROTASS: And the payments that were made, Your
16 Honor, were paid -- according to the Government, were paid to
17 Mr. Cassarino on behalf of Mr. DiMaria and Mr. Corozzo only.
18 Those are the Government's words.

19 THE COURT: It doesn't make any difference. He is a
20 part of the general hierarchy. I am not going to do anything
21 for him on these points.

22 Why don't you take an exception and take an appeal,
23 if you want to?

24 MR. PROTASS: Well, just note my objection to both
25 of the findings.

1 THE COURT: Yes, of course.

2 I think you -- I think it is a sensible argument.

3 I am not denigrating the argument. I think it doesn't apply
4 in this case.

5 There is no obstruction of justice here, is there?

6 PROBATION OFFICER: No, Your Honor.

7 THE COURT: You are living -- where is your home?

8 THE DEFENDANT: Staten Island.

9 THE COURT: Place of incarceration shall be as
10 recommended close to Staten Island, if possible.

11 MR. PROTASS: Can we make a recommendation -- a
12 request for the prison camp at Fort Dix?

13 THE COURT: Yes. I will so recommend.

14 What do you have in the way of assets now?

15 THE DEFENDANT: Excuse me?

16 THE COURT: What assets, bank accounts, cars, homes?
17 What do you got?

18 THE DEFENDANT: A home.

19 THE COURT: Where? In Staten Island?

20 THE DEFENDANT: Yes. My wife and my home in
21 Brooklyn. A property in Brooklyn.

22 THE COURT: What is the equity?

23 THE DEFENDANT: 400- or 500-.

24 THE COURT: Thousand?

25 THE DEFENDANT: Yes.

1 THE COURT: Bank accounts?

2 THE DEFENDANT: Yes.

3 THE COURT: How much in there.

4 THE DEFENDANT: Not much.

5 THE COURT: Cars?

6 THE DEFENDANT: No cars.

7 THE COURT: You don't own a car?

8 THE DEFENDANT: No. There was a used car. I got
9 rid of the car when I got arrested.

10 THE COURT: Well, what is the Government's
11 recommendation for a fine?

12 PROBATION OFFICER: 6,000 to 60,000.

13 MR. LIPTON: Judge, I don't think that the
14 Government will take a position. We're within that range.
15 I will say that Mr. Cali does own property -- I think the one
16 he is referring to is in Brooklyn -- and they are building
17 a house that is a multi-million-dollar house in Staten Island
18 that I believe when they were putting it up for bail had
19 significant equity, over -- I think it was a million dollars.

20 THE COURT: 6,000 to what?

21 PROBATION OFFICER: 6,000 to 60,000, Your Honor.

22 MR. PROTASS: Your Honor, if I can just interrupt
23 you.

24 THE COURT: Yes. Let's hear you on the fine.

25 MR. PROTASS: I apologize.

1 You had just said that it was a Level 19. In the
2 plea agreement the Government and Mr. Cali agreed that he
3 would have a minor role enhancement -- a minor role
4 adjustment. The PSR --

5 THE COURT: Well, this is a minor role?

6 MR. LIPTON: The parties had come to an agreement,
7 Your Honor, that there was a minor role adjustment and --

8 THE COURT: That is not reflected on the tally
9 sheet.

10 MR. LIPTON: You're right, Your Honor. I don't
11 believe that I had gotten to that yet, but probation did this
12 with the Government's and defense counsel's assessment.

13 THE COURT: All right. I will go along with the
14 Government on this deal because I think it was a minor role in
15 this deal. So that brings it down to 17.

16 MR. PROTASS: No. It brings it down to 13, Your
17 Honor.

18 THE COURT: How?

19 MR. PROTASS: The 19 includes four points for
20 leadership role, and then there is a minus two. So it is a
21 six-point difference.

22 THE COURT: Well, what is the Government's feel on
23 this?

24 MR. LIPTON: We stand by the plea agreement, Your
25 Honor, which was a minus two for role as opposed to plus four.

1 THE COURT: Well, let's get -- go through this
2 again.

3 I will follow the Government's position at the
4 moment. The offense level computation -- base offense is 18.

5 Everyone agrees; is that correct?

6 PROBATION OFFICER: Correct.

7 MR. LIPTON: Correct.

8 MR. PROTASS: Correct.

9 THE COURT: Expressed or implied threat, the
10 Government wants two. The defendant objects.

11 I am giving the Government two; is that correct?

12 MR. LIPTON: That is correct.

13 THE COURT: Loss exceeds 10,000. The defendants
14 wants zero. The Government wants one.

15 I am giving you one; is that correct?

16 MR. LIPTON: Yes, Judge.

17 THE COURT: That gives us 21 up to that point; is
18 that correct?

19 MR. LIPTON: That is correct.

20 MR. PROTASS: Yes.

21 THE COURT: Now, adjustment for the role in the
22 offense.

23 What is the Government's view?

24 MR. LIPTON: Pursuant to the plea agreement, minus
25 two, Your Honor.

1 THE COURT: Minus two?

2 MR. LIPTON: Yes.

3 THE COURT: And the probation objects?

4 PROBATION OFFICER: Correct, Your Honor.

5 THE COURT: I am giving him a minus two based upon
6 the agreement and the nature of the specific offense here,
7 where the role was peripheral.

8 That brings us down to 19; is that correct?

9 MR. LIPTON: Yes.

10 THE COURT: Acceptance of responsibility is minus
11 three; is that right?

12 PROBATION OFFICER: Yes, Your Honor.

13 MR. PROTASS: That is correct.

14 MR. LIPTON: Yes, Your Honor.

15 THE COURT: The global is minus three; is that
16 right?

17 PROBATION OFFICER: Yes, Your Honor.

18 MR. LIPTON: Yes, Your Honor.

19 MR. PROTASS: Yes, Your Honor.

20 THE COURT: That brings us down to 13; is that
21 right?

22 MR. PROTASS: Yes, Your Honor.

23 PROBATION OFFICER: Yes, Your Honor.

24 MR. LIPTON: That is correct, Your Honor.

25 THE COURT: Okay. What else?

1 PROBATION OFFICER: That is it, Your Honor.

2 MR. LIPTON: And I believe the final range off of 13
3 would then be different.

4 THE COURT: Well, is it agreed now it is 13?

5 MR. PROTASS: Well, with our exceptions.

6 THE COURT: Of course.

7 PROBATION OFFICER: That is 3,000 to 30,000, Your
8 Honor.

9 THE COURT: That is 3 to 30. Okay.

10 PROBATION OFFICER: And the custody is 12 to
11 18 months.

12 THE COURT: Yes.

13 MR. LIPTON: Custody range is --

14 (Whereupon a cellular telephone rings in the
15 courtroom.)

16 PROBATION OFFICER: And the custody range is 12 to
17 18 months.

18 THE COURT: Okay. So we are agreed now? We know
19 where we are? We are all on the same page?

20 MR. LIPTON: Yes, Judge. I believe so.

21 THE COURT: 3 to 30 and 12 to 18 months; is that
22 right?

23 PROBATION OFFICER: Yes, Judge.

24 MR. LIPTON: Yes, Judge.

25 THE COURT: Okay. And that is my finding with

1 respect to the applicable guideline.

2 LAW CLERK: Yes, Your Honor.

3 THE COURT: Is restitution being sought?

4 MR. LIPTON: Yes, Judge. But I think pursuant to
5 Your Honor's order we are going to address that in September.

6 THE COURT: You understand that?

7 MR. PROTASS: Yes, Your Honor.

8 THE COURT: You may have to face restitution.
9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you?

12 THE DEFENDANT: Yes.

13 THE COURT: The special assessment is \$100 subject
14 to all of the conditions of 5(d)(1)3(a)(c)(e) and (d).

15 Do you want them read?

16 MR. PROTASS: No, Your Honor.

17 MR. LIPTON: Your Honor, we would ask that that
18 include that Mr. Cali not be -- not associate with known
19 members or associates of organized crime.

20 THE COURT: I will get to that.

21 Have you ever been treated for psychiatric problems?

22 THE DEFENDANT: No.

23 THE COURT: Drug or alcohol abuse?

24 THE DEFENDANT: No. No, Your Honor.

25 THE COURT: Gambling?

1 THE DEFENDANT: No.

2 THE COURT: You are to have no guns during this
3 period.

4 THE DEFENDANT: No.

5 THE COURT: No drugs --

6 THE DEFENDANT: No.

7 THE COURT: -- except by prescription.

8 THE DEFENDANT: No.

9 THE COURT: You are not to have anything to do with
10 any members of criminal gangs or criminals.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Was any of your property taken when you
14 were arrested?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: You understand that you have the limited
17 rights to appeal; is that right?

18 THE DEFENDANT: Yes.

19 THE COURT: What is the amount of incarceration that
20 kicks in his right to appeal?

21 MR. LIPTON: Under the plea agreement, Your Honor,
22 I believe that is 18 months.

23 THE COURT: 18 months?

24 MR. LIPTON: Let me make sure.

25 It is 24 months, Your Honor.

1 THE COURT: Okay. All right. I will hear you on
2 *Booker* and 3553A and any other elements that you would like to
3 address.

4 MR. PROTASS: Thank you, Your Honor.

5 As you know, we have requested -- Mr. Cali has been
6 incarcerated since the day of his arrest, which was
7 February 7th. Today is the six-month anniversary of his
8 arrest, and as Your Honor knows, we requested a sentence of
9 time served. And we still -- even though the Court enhanced
10 the guidelines two points for expressed or implied threat, and
11 even though the Court enhanced it for one point on the money,
12 we still think that a sentence of time served, the six months
13 that he has served is appropriate given the nature and
14 circumstances of this offense and given Mr. Cali's role in the
15 offense, which was minor and was limited, really, to making
16 one inquiry on behalf of the one of his co-defendants
17 concerning a company working on the NASCAR site; as it turns
18 out, had nothing to do whatsoever with the NASCAR conspiracy.

19 It really just alerted one of his co-defendants that
20 there was work to be had at the NASCAR site.

21 And in any event, as I pointed out to the Court, and
22 I won't belabor the point, there really were two deals here
23 for the NASCAR conspiracy. My client was involved only in the
24 first one, which failed, and in which no money was exchanged,
25 and his role in that first one was minor.

1 Mr. Cali has absolutely no criminal history
2 whatsoever. He's never been arrested, never been charged, and
3 never been convicted of any offense. He has worked his entire
4 life, and he had a company called Bondtell, U.S.A., which was
5 a food and wine import company. It was doing reasonably well.
6 It had -- it had significant sales. He had five employees.

7 Unfortunately, Mr. Cali has lost his business as a
8 result of his guilty plea here because when you resell --
9 import wine into New York State and resell it, you have to
10 have a license by the feds and the state, and those licenses
11 require the owner to have no criminal record; so Mr. Cali has
12 been forced to sell his interest in the company, something he
13 has spent the past five years building.

14 He did start another company, a cardboard packaging
15 company, shortly before his arrest, and he intends, upon his
16 release, to go back and build that company, just as he has
17 built Bondtell into the company it is today.

18 I will also point out that Mr. Cali, as you can see,
19 is wearing a cast on his right arm. And that is as a result
20 of a broken -- broken thumb; is that right?

21 THE DEFENDANT: That's right.

22 MR. PROTASS: A fractured thumb that he fractured in
23 a basketball game at the Queens detention facility. It got
24 bent backwards. After swelling, significantly the Queens
25 people took Mr. Cali to Jamaica Hospital, where he was

1 x-rayed. It was determined that it was a fracture. The
2 doctor there said that he wanted to see Mr. Cali again and
3 re-x-ray it, the reason being that he was concerned about how
4 it was setting.

5 There are two possible results from that. Number
6 one is that he would have to have surgery to insert a metal
7 pin. Or if they didn't do that, it would heal the way it is,
8 and somewhere down the road, in order to fix it they would
9 have to rebreak his hand and then reset it.

10 The doctor wanted to see him two weeks ago. The
11 Queens facility has not taken him to see the doctor. So I
12 suspect it may be too late at this point to have the surgery
13 and put a pin in. I don't know. I do know that he doesn't
14 want the treatment at the Jamaica Hospital. I do know that,
15 you know, your hand and thumb is very important and that he
16 requires treatment on his hand.

17 And as I said, he served six months already. We are
18 talking about a guidelines range of 12 to 18 months, as Your
19 Honor has found. A year and a day would certainly be the low
20 end of the range, which would net out a sentence of somewhere
21 in the range of ten and a half months.

22 And we feel, in light of his criminal history, his
23 role, you know, his work history, his hand, his three young
24 children that a sentence of time served is appropriate and
25 would satisfy the conditions of 3553A, at least considering

1 the nature and circumstances of the offense, the history and
2 characteristics of the defendant. I think it would serve as
3 an adequate deterrent, it is adequate to protect the public
4 from someone who has never had any problems with the law,
5 never before in his life.

6 And so we ask that Your Honor impose a sentence of
7 time served of six months.

8 THE COURT: Thank you.

9 Do you want to add anything, sir?

10 THE DEFENDANT: No, thank you, Your Honor.

11 THE COURT: Thank you.

12 THE DEFENDANT: No, thank you.

13 THE COURT: Mr. Lipton.

14 MR. LIPTON: The Government, pursuant to the plea
15 agreement with defense counsel, indicated that it would not
16 take a position where within the guideline range, Your Honor,
17 to sentence him.

18 We do believe, though, that a guideline sentence
19 between 12 to 18 months is an appropriate and warranted
20 sentence in this case. A non guideline sentence below that we
21 think is not warranted given that Mr. Cali is an acting
22 captain in the Gambino family who, at quite a young age, has
23 risen quite far in that family and has managed to navigate
24 around the legal system and has not been arrested until this
25 case.

1 But despite that, the Government does have evidence
2 which the Government introduced at the detention hearing. And
3 I believe there was an appeal before Your Honor indicating --
4 no. There was no appeal. Sorry. It was just a second
5 request made to a different Magistrate in which we outlined
6 Mr. Cali's rise in the Gambino family and the number of
7 criminal acts -- number of criminal activities and schemes
8 that he has been involved with over the years, going back to
9 the 1980s, which I will go into if Your Honor would like. But
10 suffice it to say it hasn't been because he has been a dutiful
11 employee of his importing company that has allowed him to gain
12 such a foothold and obtain such status in the Gambino family.

13 And it is only because of that status that he had
14 the participation in the conspiracy that he was charged with.
15 It was because of his status that they had to go to him and
16 get the clearance initially so that he would get a piece of
17 it. And ultimately money was paid. It wasn't a tremendous
18 amount, but the money was paid from that victim because of the
19 Gambino family's ability, and Mr. Cali's position as evidence
20 of that, to force him to make those payments or else the work
21 would not continue.

22 So for those reasons, Your Honor, for his role, for
23 his characteristics, we ask that Your Honor sentence him to a
24 guideline sentence, but we do not take a position where within
25 the guideline range you do so.

1 MR. PROTASS: If I could respond very briefly, Your
2 Honor.

3 THE COURT: Yes. Of course.

4 MR. PROTASS: Mr. Cali -- we did have a bail hearing
5 earlier, Your Honor, and I point out that the Magistrate Judge
6 who heard that hearing found very clearly that Mr. Cali did
7 not pose a threat to society and didn't impose a threat to
8 anybody.

9 And I think as was said by the charged in the
10 indictment, Mr. Cali is charged in only two of the counts of
11 the indictment, Count 38 and 39 relating to the NASCAR.

12 He is mentioned substantively really on only two
13 pages of the indictment. He is not charged in the RICO count,
14 which comprises over half of the indictment, that is, Count 1
15 of the indictment. His role, as Your Honor found earlier,
16 with regard to this NASCAR conspiracy, was peripheral.

17 And we, therefore, respectfully submit that, you
18 know, six months is a sufficient sentence for that peripheral
19 involvement in a conspiracy that ultimately failed, and there
20 was no money that was exchanged.

21 THE COURT: Thank you.

22 This is a serious offense. The defendant is a good
23 family person. He has a good work record, but he is a
24 criminal.

25 In view of the seriousness of the offense and to

1 promote respect for the law and just punishment, a substantial
2 term of imprisonment is required. Specific deterrent as a
3 general deterrent is required for the sentence to protect the
4 public. No educational or vocational training or medical
5 treatment while in prison is advantageous.

6 Now, why don't you want to go to Jamaica Hospital?
7 It is a fairly good hospital.

8 THE DEFENDANT: They were supposed to take me back
9 to get X rays again, but they never took me to see if it was
10 healing properly.

11 THE COURT: Well, I will order them to take you
12 back, if you want.

13 THE DEFENDANT: Judge, I don't know if they're --
14 that is fine.

15 THE COURT: All right. Then make sure he gets taken
16 back immediately.

17 MR. LIPTON: I will communicate take to the Queens
18 Detention Center, Your Honor.

19 THE COURT: The Court has considered the kind of
20 sentences available and the range and the sentencing
21 commission policy and other statements, each element of 3553A
22 give substantial weight to the guidelines and all other
23 considerations, and sentences the defendant to 18 months in
24 prison with a fine of \$30,000, the fine to be payable over the
25 years of release from prison, payable no interest. No

1 interest on the special assessment.

2 THE CLERK: He is named in Counts 38 and 39, Judge.

3 He pled to --

4 MR. PROTASS: Count 38.

5 MR. LIPTON: We move to dismiss the remaining

6 counts.

7 THE COURT: Granted.

8 Good luck.

9 MR. PROTASS: Thank you.

10 MR. LIPTON: Thank you, Judge.

11 (Sentencing proceeding concluded.)

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U.S.A. v. FRANK CALI

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\$	39 [2] - 31:11, 33:2 3rd [1] - 4:22	advantageous [1] - 32:5 affirmed [1] - 7:20 age [1] - 29:22 ago [1] - 28:10 agree [2] - 4:16, 6:12 agreed [4] - 16:17, 20:2, 23:4, 23:18 agreement [7] - 20:2, 20:6, 20:24, 21:24, 22:6, 25:21, 29:15 agrees [1] - 21:5 Aided [1] - 1:25 alcohol [1] - 24:23 alerted [1] - 26:19 allegations [2] - 8:23, 11:2 alleged [3] - 9:2, 11:9, 12:5 allowed [1] - 30:11 amended [1] - 8:13 AMERICA [1] - 1:3 amount [3] - 15:14, 25:19, 30:18 anniversary [1] - 26:7 anytime [1] - 13:23 apart [1] - 16:20 apologize [1] - 19:25 appeal [6] - 15:7, 17:22, 25:17, 25:20, 30:3, 30:4 appear [1] - 12:21 Appearances [1] - 2:3 APPEARANCES [1] - 1:12 applicable [1] - 24:1 applied [1] - 10:20 apply [7] - 7:21, 7:24, 8:11, 9:24, 12:23, 18:3 appropriate [4] - 6:7, 26:13, 28:24, 29:19 argument [3] - 14:11, 18:2, 18:3 arm [1] - 27:19 arrangement [2] - 11:16, 11:20 arrest [3] - 26:6, 26:8, 27:15 arrested [4] - 19:9, 25:14, 27:2, 29:24 assessment [3] - 20:12, 24:13, 33:1 assets [2] - 18:14, 18:16 Assistant [1] - 1:16 associate [1] - 24:18 associates [1] - 24:19 attorney [4] - 3:7, 3:14, 3:16, 5:19 Attorney [1] - 1:14 Attorneys [1] - 1:16 August [4] - 1:7, 4:3, 7:13, 7:14 available [1] - 32:20 Avenue [1] - 1:18
\$100 [1] - 24:13 \$13,000 [1] - 15:18 \$30,000 [1] - 32:24	4	backwards [1] - 27:24 bail [2] - 19:18, 31:4 bank [1] - 18:16 Bank [1] - 19:1 base [1] - 21:4 Based [1] - 5:12
0	4 [12] - 7:1, 7:6, 7:19, 8:1, 8:8, 10:3, 10:9, 10:22, 11:23, 13:3, 13:6, 15:23 400 [1] - 18:23 4th [2] - 7:13, 7:14	
08-CR-00076 [1] - 1:3	5	B
1	5(d)(1)(3)(a)(c)(e) [1] - 24:14 500- [1] - 18:23	
1 [3] - 4:23, 8:21, 31:14 10,000 [1] - 21:13 10165 [1] - 1:19 10:30 [1] - 1:8 11201 [2] - 1:15, 1:23 12 [5] - 23:10, 23:16, 23:21, 28:18, 29:19 13 [4] - 20:16, 22:20, 23:2, 23:4 13,000 [1] - 17:1 1301 [1] - 1:19 134 [4] - 7:2, 7:6, 7:19, 8:8 136 [4] - 7:2, 7:6, 7:19, 8:8 137 [4] - 7:2, 7:6, 7:19, 8:9 139 [4] - 7:2, 7:7, 7:20, 8:9 140 [2] - 8:17, 8:20 143 [2] - 10:18, 15:9 16 [2] - 8:1, 8:8 17 [4] - 7:24, 8:17, 8:20, 20:15 18 [11] - 8:1, 8:8, 21:4, 23:11, 23:17, 23:21, 25:22, 25:23, 28:18, 29:19, 32:23 19 [5] - 6:14, 9:13, 20:1, 20:19, 22:8 1951 [1] - 14:14 1980s [1] - 30:9	6	B
	6,000 [3] - 19:12, 19:20, 19:21 60,000 [2] - 19:12, 19:21	
	7	B
	7 [2] - 1:7, 4:3 7th [1] - 26:7	
	9	B
	95 [6] - 7:1, 7:2, 7:6, 7:19, 8:1, 8:8 99 [4] - 7:2, 7:6, 7:19, 8:8	
2	A	B
2 [1] - 6:1 2008 [3] - 1:7, 4:3, 4:22 21 [1] - 21:17 22 [1] - 6:14 225 [1] - 1:22 24 [1] - 25:25 271 [1] - 1:14	a.m [1] - 1:8 ability [2] - 10:6, 30:19 absent [1] - 8:25 absolutely [2] - 10:22, 27:1 abuse [1] - 24:23 accept [1] - 5:13 Acceptance [1] - 22:10 According [1] - 16:21 according [2] - 11:1, 17:16 accounted [1] - 6:3 accounts [2] - 18:16, 19:1 accurate [1] - 4:24 accused [2] - 14:12, 14:14 acting [4] - 8:17, 8:23, 13:2, 29:21 action [1] - 17:7 activities [1] - 30:7 activity [1] - 10:20 acts [1] - 30:7 actual [2] - 13:17, 14:25 add [3] - 8:4, 8:6, 29:9 address [4] - 5:18, 5:19, 24:5, 26:3 addressed [1] - 10:11 adequate [2] - 29:3 adjustment [3] - 20:4, 20:7, 21:21	
3		B
3 [2] - 23:9, 23:21 3,000 [1] - 23:7 30 [2] - 23:9, 23:21 30,000 [1] - 23:7 305 [1] - 1:18 3553A [3] - 26:2, 28:25, 32:21 38 [3] - 31:11, 33:2, 33:4		

<p>based [3] - 11:17, 15:22, 22:5 basketball [1] - 27:23 BEFORE [1] - 1:9 began [1] - 17:13 begin [1] - 9:10 beginning [1] - 7:12 behalf [5] - 2:9, 3:20, 3:21, 17:17, 26:16 belabor [1] - 26:22 below [1] - 29:20 bent [1] - 27:24 BENTON [1] - 1:13 better [1] - 12:10 between [1] - 29:19 Bondtall [2] - 27:4, 27:17 Booker [1] - 26:2 BOP's [1] - 6:22 briefly [1] - 31:1 bring [1] - 6:14 brings [4] - 20:15, 20:16, 22:8, 22:20 broken [2] - 27:20 Brooklyn [6] - 1:5, 1:15, 1:23, 18:21, 19:16 brother [3] - 2:21, 2:24, 3:4 brother-in-law [3] - 2:21, 2:24, 3:4 build [1] - 27:16 building [2] - 19:16, 27:13 built [1] - 27:17 business [1] - 27:7 BY [1] - 1:15</p>	<p>caveat [1] - 7:23 Cefalu [1] - 11:10 cellular [1] - 23:14 center [1] - 14:7 Center [1] - 32:18 certain [1] - 12:7 certainly [1] - 28:19 challenge [2] - 5:22, 10:7 change [1] - 15:9 characteristics [2] - 29:2, 30:23 characterized [1] - 16:14 charge [3] - 8:24, 8:25, 14:22 charged [7] - 8:21, 11:3, 27:2, 30:14, 31:9, 31:10, 31:13 children [1] - 28:24 circumstances [3] - 6:7, 26:14, 29:1 cite [1] - 11:22 citizen [1] - 3:11 clear [1] - 13:7 clearance [1] - 30:16 cleared [1] - 14:4 clearly [1] - 31:6 CLERK [5] - 2:1, 2:13, 2:18, 24:2, 33:2 clerk [1] - 2:16 client [9] - 10:21, 11:3, 11:9, 11:16, 12:12, 16:6, 16:24, 17:3, 26:23 client's [1] - 12:20 close [2] - 13:18, 18:10 co [5] - 11:11, 11:21, 12:7, 26:16, 26:19 co-defendants [5] - 11:11, 11:21, 12:7, 26:16, 26:19 codefendants [2] - 11:10, 16:15 coercion [1] - 10:16 collapsed [1] - 13:11 commission [1] - 32:21 communicate [1] - 32:17 company [10] - 11:11, 26:17, 27:4, 27:5, 27:12, 27:14, 27:15, 27:16, 27:17, 30:11 comprises [1] - 31:14 computation [1] - 21:4 Computer [1] - 1:25 concerned [1] - 28:3 concerning [1] - 26:17 concluded [1] - 33:11 conclusions [1] - 17:11 conditions [2] - 24:14, 28:25 conduct [2] - 6:19, 6:21 conflict [1] - 3:16 connection [1] - 12:11 consideration [1] - 6:23 considerations [1] - 32:23 considered [1] - 32:19 considering [1] - 28:25 conspiracy [14] - 11:3, 11:15, 14:21, 15:1, 15:4, 15:19, 16:10, 17:10, 26:18, 26:23, 30:14, 31:16, 31:19 conspirator [1] - 14:15</p>	<p>contact [7] - 10:22, 10:24, 11:1, 11:2, 12:17, 13:6, 13:15 contemplation [1] - 13:13 contentions [2] - 3:18, 3:20 contested [2] - 9:16, 9:19 continue [1] - 30:21 continuous [1] - 17:6 contract [2] - 12:3, 12:4 control [1] - 13:6 convicted [1] - 27:3 cooperating [5] - 13:15, 13:20, 15:23, 16:16, 16:19 cordial [1] - 13:18 Corozzo [2] - 15:22, 17:17 Correct [5] - 17:14, 21:6, 21:7, 21:8, 22:4 correct [13] - 6:14, 8:2, 9:13, 16:1, 21:5, 21:11, 21:12, 21:15, 21:18, 21:19, 22:8, 22:13, 22:24 counsel [4] - 3:5, 4:16, 13:9, 29:15 counsel's [1] - 20:12 Count [4] - 8:21, 31:11, 31:14, 33:4 count [3] - 6:2, 8:22, 31:13 counting [3] - 14:19, 14:23, 15:3 country [1] - 3:11 Counts [1] - 33:2 counts [2] - 31:10, 33:6 course [4] - 17:6, 18:1, 23:6, 31:3 COURT [136] - 1:1, 2:6, 2:12, 2:20, 2:23, 3:1, 3:3, 3:6, 3:9, 3:11, 3:13, 3:16, 3:18, 3:23, 3:25, 4:2, 4:6, 4:9, 4:13, 4:18, 4:21, 5:1, 5:3, 5:6, 5:8, 5:10, 5:12, 5:16, 5:18, 5:22, 6:5, 6:9, 6:12, 6:16, 7:4, 7:15, 7:17, 8:1, 8:3, 8:7, 8:13, 8:19, 9:1, 9:4, 9:7, 9:9, 9:13, 9:18, 9:20, 10:3, 10:9, 10:13, 10:19, 10:24, 11:5, 11:7, 13:5, 13:12, 13:25, 14:8, 14:18, 14:21, 15:16, 15:20, 15:25, 16:4, 16:8, 16:10, 17:1, 17:12, 17:19, 18:1, 18:7, 18:9, 18:13, 18:16, 18:19, 18:22, 18:24, 19:1, 19:3, 19:5, 19:7, 19:10, 19:20, 19:24, 20:5, 20:8, 20:13, 20:18, 20:22, 21:1, 21:9, 21:13, 21:17, 21:21, 22:1, 22:3, 22:5, 22:10, 22:15, 22:20, 22:25, 23:4, 23:6, 23:9, 23:12, 23:18, 23:21, 23:25, 24:3, 24:6, 24:8, 24:11, 24:13, 24:20, 24:23, 24:25, 25:2, 25:5, 25:7, 25:9, 25:13, 25:16, 25:19, 25:23, 26:1, 29:8, 29:11, 29:13, 31:3, 31:21, 32:11, 32:15, 32:19, 33:7 Court [10] - 1:21, 1:22, 4:13, 4:23, 5:18, 5:19, 26:9, 26:11, 26:21, 32:19 Courthouse [1] - 1:4 courtroom [1] - 23:15 crime [1] - 24:19 criminal [8] - 9:14, 25:10, 27:1, 27:11, 28:22, 30:7, 31:24 Criminal [1] - 2:1 criminals [1] - 25:10 custody [2] - 23:10, 23:16</p>
C		
<p>Cadman [2] - 1:14, 1:22 calculation [2] - 6:3, 9:13 Cali [31] - 2:2, 2:7, 2:19, 3:21, 6:22, 7:3, 7:7, 7:22, 7:24, 8:11, 8:17, 8:21, 8:23, 12:8, 12:9, 13:8, 17:8, 19:15, 20:2, 24:18, 26:5, 27:1, 27:7, 27:11, 27:18, 27:25, 28:2, 29:21, 31:4, 31:6, 31:10 CALI [1] - 1:6 Cali's [6] - 11:21, 12:7, 16:15, 26:14, 30:6, 30:19 camp [1] - 18:12 CAMPBELL [1] - 1:13 capable [1] - 4:14 captain [4] - 8:18, 8:23, 13:2, 29:22 captured [1] - 12:19 car [3] - 19:7, 19:8, 19:9 cardboard [1] - 27:14 cars [2] - 18:16, 19:6 Cars [1] - 19:5 case [8] - 10:20, 12:20, 12:23, 14:11, 15:11, 18:4, 29:20, 29:25 cases [2] - 14:4, 15:11 Cassarino [2] - 10:2, 17:17 cast [1] - 27:19 category [1] - 9:14</p>		

Custody ^[1] - 23:13 cut ^[4] - 12:9, 13:25, 16:24, 17:4	done ^[1] - 16:18 double ^[3] - 14:19, 14:23, 15:3 down ^[6] - 6:14, 20:15, 20:16, 22:8, 22:20, 28:8 downward ^[1] - 4:4 Drug ^[1] - 24:23 drugs ^[1] - 25:5 dump ^[4] - 11:22, 15:24, 16:16, 17:13 dumped ^[1] - 12:3 dumping ^[4] - 11:22, 11:23, 12:2, 17:12 during ^[1] - 25:2 dutiful ^[1] - 30:10	facility ^[2] - 27:23, 28:11 fact ^[3] - 9:9, 12:8, 13:13 failed ^[2] - 26:24, 31:19 fairly ^[1] - 32:7 family ^[11] - 2:20, 2:22, 2:23, 8:18, 13:1, 17:8, 29:22, 29:23, 30:6, 30:12, 31:23 family's ^[1] - 30:19 far ^[2] - 11:15, 29:23 Fatico ^[1] - 5:14 February ^[1] - 26:7 feds ^[1] - 27:10 fell ^[1] - 16:20 few ^[1] - 5:25 file ^[1] - 3:20 Filippeli ^[1] - 10:1 fill ^[2] - 11:22, 12:3 final ^[1] - 23:2 findings ^[3] - 9:9, 10:14, 17:25 fine ^[6] - 2:25, 19:11, 19:24, 32:14, 32:24 first ^[7] - 5:25, 12:12, 16:14, 17:1, 17:8, 26:24, 26:25 five ^[2] - 27:6, 27:13 fix ^[1] - 28:8 follow ^[1] - 21:3 following ^[1] - 7:18 food ^[1] - 27:5 foothold ^[1] - 30:12 force ^[1] - 30:20 forced ^[1] - 27:12 Fort ^[1] - 18:12 forth ^[2] - 7:10, 11:18 four ^[2] - 20:19, 20:25 Four ^[1] - 17:12 fourth ^[1] - 7:17 fracture ^[1] - 28:1 fractured ^[2] - 27:22 Frank ^[2] - 2:2, 2:19 FRANK ^[1] - 1:6 freighted ^[1] - 10:15 FREIGHTED ^[1] - 10:16
D	E	
d ^[1] - 24:14 deal ^[19] - 9:20, 12:5, 12:6, 12:9, 12:10, 12:12, 13:8, 13:13, 16:14, 16:18, 16:19, 16:22, 16:24, 16:25, 17:2, 17:3, 20:14, 20:15 dealing ^[2] - 6:1, 10:3 deals ^[4] - 13:10, 16:13, 17:6, 26:22 dealt ^[1] - 17:5 DEFENDANT ^[42] - 2:11, 2:17, 2:19, 2:25, 3:2, 3:8, 3:10, 3:12, 3:15, 4:25, 5:2, 5:5, 5:7, 5:9, 5:11, 5:21, 18:8, 18:15, 18:18, 18:20, 18:23, 18:25, 19:2, 19:4, 19:6, 19:8, 24:10, 24:12, 24:22, 24:24, 25:1, 25:4, 25:6, 25:8, 25:12, 25:15, 25:18, 27:21, 29:10, 29:12, 32:8, 32:13 Defendant ^[3] - 1:7, 1:18, 2:15 defendant ^[10] - 2:12, 6:13, 7:22, 13:6, 13:14, 21:10, 29:2, 31:22, 32:23 defendant's ^[1] - 4:13 defendants ^[13] - 6:4, 6:20, 7:3, 7:9, 7:20, 8:9, 10:12, 11:11, 11:21, 12:7, 21:13, 26:16, 26:19 defense ^[4] - 9:12, 13:9, 20:12, 29:15 define ^[1] - 16:13 demeanor ^[1] - 4:14 demonstrates ^[1] - 13:18 denigrating ^[1] - 18:3 Department ^[1] - 7:11 departure ^[1] - 4:4 deported ^[1] - 3:13 despite ^[1] - 30:1 Detention ^[1] - 32:18 detention ^[3] - 11:19, 27:23, 30:2 determined ^[1] - 28:1 deterrent ^[3] - 29:3, 32:2, 32:3 difference ^[3] - 16:8, 17:19, 20:21 different ^[5] - 13:10, 15:1, 17:10, 23:3, 30:5 DiMaria ^[2] - 15:22, 17:17 directly ^[2] - 7:22, 8:11 disagree ^[1] - 12:24 disagreed ^[1] - 12:25 dismiss ^[1] - 33:5 disposition ^[2] - 6:6, 6:10 DISTRICT ^[2] - 1:1, 1:1 District ^[1] - 1:10 Dix ^[1] - 18:12 doctor ^[3] - 28:2, 28:10, 28:11 document ^[1] - 6:2 Doe ^[4] - 10:22, 11:23, 13:3, 15:23 dollar ^[1] - 19:17 dollars ^[1] - 19:19 Domenico ^[1] - 11:10	East ^[2] - 1:14, 1:22 EASTERN ^[1] - 1:1 economic ^[2] - 14:10, 14:16 educational ^[1] - 32:4 element ^[1] - 32:21 elements ^[1] - 26:2 employee ^[1] - 30:11 employees ^[1] - 27:6 end ^[3] - 7:12, 12:1, 28:20 enhanced ^[2] - 26:9, 26:11 enhancement ^[3] - 12:22, 15:14, 20:3 enterprise ^[1] - 8:22 enticed ^[1] - 14:17 entire ^[1] - 27:3 entirely ^[1] - 5:6 enumerated ^[1] - 7:8 equity ^[2] - 18:22, 19:19 Ernest ^[2] - 11:11, 15:22 ESQUIRE ^[1] - 1:13 EVAN ^[1] - 1:16 event ^[1] - 26:21 evidence ^[6] - 7:15, 7:20, 8:10, 13:18, 30:1, 30:19 exceeds ^[1] - 21:13 except ^[1] - 25:7 exception ^[1] - 17:22 exceptions ^[1] - 23:5 exchange ^[3] - 11:24, 12:13, 16:17 exchanged ^[2] - 26:24, 31:20 exclusive ^[3] - 11:21, 11:23, 12:2 Excuse ^[1] - 18:15 Exhibit ^[1] - 4:23 explained ^[1] - 3:7 express ^[1] - 9:16 Expressed ^[1] - 21:9 expressed ^[2] - 9:20, 26:10 extent ^[3] - 6:23, 7:3, 15:3 extortion ^[1] - 13:3	
	F	G
	face ^[1] - 24:8	gain ^[1] - 30:11 Gambino ^[7] - 8:18, 13:1, 17:7, 29:22, 30:6, 30:12, 30:19 Gambling ^[1] - 24:25 game ^[1] - 27:23 gang ^[1] - 14:3 gangs ^[1] - 25:10 general ^[3] - 12:25, 17:20, 32:3 given ^[4] - 11:23, 26:13, 26:14, 29:21 global ^[4] - 6:1, 6:6, 6:10, 22:15 Government ^[22] - 1:13, 2:3, 2:4, 6:12, 7:21, 8:10, 9:11, 12:5, 12:20, 16:14, 16:23, 16:24, 17:16, 19:14, 20:2, 20:14, 21:10, 21:11, 21:14, 29:14, 30:1, 30:2

<p>Government's [13] - 6:5, 11:18, 11:19, 12:8, 13:20, 16:21, 17:18, 19:10, 20:12, 20:22, 21:3, 21:23 Granted [1] - 33:7 Grillo [2] - 11:11, 15:22 guideline [6] - 24:1, 29:16, 29:18, 29:20, 30:24, 30:25 guidelines [7] - 4:9, 6:3, 14:22, 15:5, 26:10, 28:18, 32:22 guilty [4] - 5:8, 5:10, 27:8 Guilty [1] - 5:11 guns [1] - 25:2</p>	<p>I</p> <p>ice [1] - 13:25 immediately [1] - 32:16 implications [1] - 10:16 implicit [1] - 14:5 implied [9] - 9:16, 9:21, 10:7, 12:25, 14:16, 14:25, 21:9, 26:10 import [2] - 27:5, 27:9 important [2] - 16:13, 28:15 importing [1] - 30:11 impose [2] - 29:6, 31:7 imposes [1] - 6:24 imprisonment [1] - 32:2 improper [1] - 17:10 inappropriate [1] - 8:24 incarcerated [1] - 26:6 incarceration [2] - 18:9, 25:19 incarceratory [1] - 6:24 inclined [1] - 15:10 include [1] - 24:18 included [2] - 6:9, 7:25 includes [1] - 20:19 inclusion [1] - 6:20 indicated [1] - 29:15 indicating [1] - 30:3 indictment [7] - 8:22, 9:3, 31:10, 31:11, 31:13, 31:14, 31:15 individual [3] - 13:1, 13:3, 13:20 individuals [1] - 15:21 informant [1] - 10:9 information [1] - 5:12 inquiry [1] - 26:16 insert [1] - 28:6 instances [1] - 13:17 intends [1] - 27:15 interest [3] - 27:12, 32:25, 33:1 interesting [4] - 11:14, 14:19, 14:24, 15:5 interrupt [1] - 19:22 Interstate [2] - 11:12, 11:14 interstate [1] - 11:13 introduced [1] - 30:2 involved [8] - 7:20, 8:10, 10:14, 11:17, 12:12, 14:16, 26:23, 30:8 involvement [1] - 31:19 Island [4] - 18:8, 18:10, 18:19, 19:17 issue [3] - 5:16, 10:10, 15:15 itself [1] - 16:23</p>	<p>John [4] - 10:22, 11:23, 13:3, 15:23 joinder [1] - 17:10 Judge [22] - 1:10, 4:8, 4:11, 4:12, 4:19, 4:23, 7:23, 9:2, 9:6, 10:10, 13:7, 17:14, 19:13, 21:16, 23:20, 23:23, 23:24, 24:4, 31:5, 32:13, 33:2, 33:10 July [1] - 9:25 June [1] - 4:22 jury [1] - 5:16 justice [1] - 18:5</p>
<p>H</p>		<p>K</p>
<p>Haasnoot [1] - 2:9 half [2] - 28:21, 31:14 hand [5] - 2:14, 28:9, 28:15, 28:16, 28:23 HARLAN [1] - 1:18 Harlan [1] - 2:7 harm [2] - 14:16, 14:17 heal [1] - 28:7 healing [1] - 32:10 hear [3] - 9:18, 19:24, 26:1 heard [1] - 31:6 hearing [4] - 5:16, 30:2, 31:4, 31:6 heavily [1] - 10:14 Hello [1] - 2:11 help [1] - 14:9 hierarchy [1] - 17:20 highly [1] - 6:24 hiring [1] - 5:14 history [5] - 9:14, 27:1, 28:22, 28:23, 29:1 home [4] - 2:22, 18:7, 18:18, 18:20 homes [1] - 18:16 Honor [81] - 2:5, 2:8, 2:11, 2:22, 2:25, 3:2, 3:17, 3:22, 4:1, 4:5, 4:7, 5:15, 5:17, 5:24, 6:2, 6:7, 6:15, 6:23, 8:2, 8:5, 8:12, 8:21, 9:12, 9:15, 9:23, 9:25, 10:5, 10:11, 10:18, 10:21, 11:14, 12:17, 12:24, 13:14, 14:6, 15:15, 16:2, 16:5, 16:7, 17:16, 18:6, 19:21, 19:22, 20:7, 20:10, 20:17, 20:25, 21:25, 22:4, 22:12, 22:14, 22:17, 22:18, 22:19, 22:22, 22:23, 22:24, 23:1, 23:8, 24:2, 24:7, 24:16, 24:17, 24:24, 25:15, 25:21, 25:25, 26:4, 26:8, 28:19, 29:6, 29:10, 29:16, 30:3, 30:9, 30:22, 30:23, 31:2, 31:5, 31:15, 32:18 Honor's [2] - 14:20, 24:5 HONORABLE [1] - 1:10 Hospital [3] - 27:25, 28:14, 32:6 hospital [1] - 32:7 hours [1] - 12:19 house [2] - 19:17 hundreds [1] - 12:19</p>		<p>kicks [1] - 25:20 kind [2] - 15:6, 32:19 knees [1] - 14:3 known [1] - 24:18 knows [1] - 26:8</p>
	<p>J</p>	<p>L</p>
	<p>JACK [1] - 1:10 Jamaica [3] - 27:25, 28:14, 32:6 January [1] - 4:22 JBW [1] - 1:3 Joey [1] - 2:4 JOEY [1] - 1:15</p>	<p>lack [1] - 12:10 ladder [1] - 14:4 last [1] - 7:12 late [1] - 28:12 LAW [4] - 2:1, 2:13, 2:18, 24:2 law [7] - 2:15, 2:21, 2:24, 3:4, 9:9, 29:4, 32:1 leadership [1] - 20:20 least [2] - 14:22, 28:25 legal [1] - 29:24 Leonard [1] - 15:21 less [1] - 15:8 letter [3] - 3:21, 4:2, 7:11 Level [1] - 20:1 level [1] - 21:4 Levy [1] - 4:23 license [1] - 27:10 licenses [1] - 27:10 life [2] - 27:4, 29:5 light [2] - 8:24, 28:22 limited [2] - 25:16, 26:15 LIPTON [48] - 1:15, 2:4, 3:19, 4:8, 4:12, 4:19, 6:6, 7:23, 9:2, 9:11, 10:5, 10:10, 12:24, 13:7, 14:14, 15:18, 15:21, 16:1, 16:5, 16:9, 17:5, 17:14, 19:13, 20:6, 20:10, 20:24, 21:7, 21:12, 21:16, 21:19, 21:24, 22:2, 22:9, 22:14, 22:18, 22:24, 23:2, 23:13, 23:20, 23:24, 24:4, 24:17, 25:21, 25:24, 29:14, 32:17, 33:5, 33:10 Lipton [2] - 2:4, 29:13 living [1] - 18:7 look [1] - 4:21 Loss [1] - 21:13 loss [2] - 15:17, 15:18 lost [2] - 12:2, 27:7 Louis [1] - 10:1</p>

low ^[1] - 28:19 luck ^[1] - 33:8	multi ^[1] - 19:17 multi-million-dollar ^[1] - 19:17	26:16, 26:19, 26:24, 26:25, 28:6 one-point ^[1] - 15:13 opinion ^[1] - 6:8 opportunity ^[1] - 3:22 opposed ^[1] - 20:25 option ^[1] - 10:6 order ^[4] - 14:20, 24:5, 28:8, 32:11 organized ^[1] - 24:19 Otherwise ^[2] - 8:13, 9:5 outlined ^[1] - 30:5 own ^[4] - 12:7, 16:21, 19:7, 19:15 owner ^[1] - 27:11
M	N	
Madison ^[1] - 1:18 Magistrate ^[2] - 30:5, 31:5 managed ^[1] - 29:23 manual ^[1] - 4:10 manuscript ^[1] - 4:21 Mario ^[1] - 10:2 matter ^[3] - 6:4, 6:20, 8:16 matters ^[1] - 15:2 meals ^[1] - 13:19 medical ^[1] - 32:4 member ^[2] - 2:20, 2:22 members ^[2] - 24:19, 25:10 memo ^[2] - 11:19 memorandum ^[2] - 12:9, 13:16 mentioned ^[1] - 31:12 met ^[2] - 10:23, 12:18 metal ^[1] - 28:6 million ^[2] - 19:17, 19:19 minor ^[7] - 20:3, 20:5, 20:7, 20:14, 26:15, 26:25 minus ^[6] - 20:20, 20:25, 21:24, 22:5, 22:10, 22:15 Minus ^[1] - 22:1 Minutes ^[1] - 1:24 mob ^[3] - 10:15, 10:19, 14:9 mob-related ^[1] - 10:19 moment ^[1] - 21:4 money ^[6] - 15:15, 26:11, 26:24, 30:17, 30:18, 31:20 month ^[1] - 26:7 months ^[14] - 23:11, 23:17, 23:21, 25:22, 25:23, 25:25, 26:12, 28:17, 28:18, 28:21, 29:7, 29:19, 31:18, 32:23 morning ^[5] - 2:5, 2:6, 2:8, 3:21, 14:20 motion ^[1] - 3:20 motions ^[2] - 3:18, 3:19 move ^[1] - 33:5 MR ^[104] - 2:4, 2:7, 2:21, 3:17, 3:19, 3:24, 4:1, 4:5, 4:7, 4:8, 4:11, 4:12, 4:17, 4:19, 5:15, 5:17, 5:24, 6:6, 6:17, 7:5, 7:14, 7:16, 7:23, 8:2, 8:16, 8:20, 9:2, 9:6, 9:8, 9:11, 9:12, 9:15, 9:19, 9:23, 10:5, 10:10, 10:21, 11:1, 11:6, 11:8, 12:24, 13:7, 13:14, 14:6, 14:14, 14:20, 15:13, 15:18, 15:21, 16:1, 16:5, 16:6, 16:9, 16:12, 17:3, 17:5, 17:14, 17:15, 17:24, 18:11, 19:13, 19:22, 19:25, 20:6, 20:10, 20:16, 20:19, 20:24, 21:7, 21:8, 21:12, 21:16, 21:19, 21:20, 21:24, 22:2, 22:9, 22:13, 22:14, 22:18, 22:19, 22:22, 22:24, 23:2, 23:5, 23:13, 23:20, 23:24, 24:4, 24:7, 24:16, 24:17, 25:21, 25:24, 26:4, 27:22, 29:14, 31:1, 31:4, 32:17, 33:4, 33:5, 33:9, 33:10	name ^[1] - 2:18 named ^[1] - 33:2 narrative ^[1] - 16:21 NASCAR ^[16] - 11:3, 11:5, 11:6, 11:8, 11:12, 11:15, 11:22, 14:7, 15:25, 16:1, 26:17, 26:18, 26:20, 26:23, 31:11, 31:16 nature ^[3] - 22:6, 26:13, 29:1 navigate ^[1] - 29:23 need ^[2] - 8:5, 13:23 negotiating ^[1] - 17:7 net ^[1] - 28:20 never ^[10] - 10:23, 12:18, 27:2, 27:3, 29:4, 29:5, 32:9 new ^[5] - 12:5, 12:6, 16:22, 16:23, 16:25 NEW ^[1] - 1:1 New ^[6] - 1:5, 1:15, 1:19, 1:23, 27:9 Nicholas ^[1] - 15:22 non ^[1] - 29:20 NORRIS ^[1] - 1:16 note ^[1] - 17:24 nothing ^[2] - 11:14, 26:18 notwithstanding ^[1] - 6:8 number ^[2] - 30:6, 30:7 Number ^[8] - 10:3, 10:9, 10:22, 11:23, 13:3, 13:6, 15:23, 28:5 numbers ^[1] - 8:5	P
	O	packaging ^[1] - 27:14 page ^[1] - 23:19 pages ^[1] - 31:13 paid ^[10] - 12:7, 15:19, 15:21, 16:4, 16:6, 17:1, 17:16, 30:17, 30:18 Paid ^[1] - 15:20 Paragraph ^[6] - 6:1, 7:2, 7:19, 7:24, 10:18, 15:9 paragraph ^[3] - 7:18, 8:5, 10:17 paragraphs ^[3] - 6:19, 7:8, 7:25 Paragraphs ^[5] - 7:1, 7:4, 7:6, 8:8, 8:17 part ^[4] - 7:7, 12:10, 17:9, 17:20 participation ^[1] - 30:14 particular ^[1] - 13:1 parties ^[1] - 20:6 past ^[1] - 27:13 pay ^[2] - 14:9, 17:9 payable ^[2] - 32:24, 32:25 payments ^[4] - 16:3, 16:19, 17:15, 30:20 people ^[4] - 10:6, 13:5, 14:1, 27:25 percentage ^[1] - 11:24 period ^[1] - 25:3 peripheral ^[3] - 22:7, 31:16, 31:18 person ^[3] - 10:14, 12:1, 31:23 personal ^[1] - 13:18 physical ^[2] - 14:10, 14:17 piece ^[2] - 13:9, 30:16 pin ^[2] - 28:7, 28:13 Place ^[1] - 18:9 place ^[1] - 13:4 Plaza ^[2] - 1:14, 1:22 plea ^[7] - 5:13, 20:2, 20:24, 21:24, 25:21, 27:8, 29:14 plead ^[2] - 5:8, 5:10 pleading ^[1] - 4:23 pled ^[1] - 33:3 plus ^[1] - 20:25 point ^[11] - 12:22, 14:12, 15:13, 16:12, 20:21, 21:17, 26:11, 26:22, 27:18, 28:12, 31:5 pointed ^[2] - 13:16, 26:21 points ^[7] - 5:25, 6:13, 9:16, 15:8,

17:21, 20:19, 26:10 policy [1] - 32:21 pose [1] - 31:7 position [5] - 19:14, 21:3, 29:16, 30:19, 30:24 possible [3] - 4:1, 18:10, 28:5 prejudicial [1] - 6:25 prescription [1] - 25:7 present [3] - 2:20, 2:21, 2:23 presentence [6] - 3:6, 5:23, 7:17, 11:18, 11:20, 15:14 primary [1] - 13:15 prison [4] - 18:12, 32:5, 32:24, 32:25 probation [2] - 20:11, 22:3 PROBATION [20] - 2:9, 6:11, 6:15, 7:13, 8:4, 8:12, 10:18, 18:6, 19:12, 19:21, 21:6, 22:4, 22:12, 22:17, 22:23, 23:1, 23:7, 23:10, 23:16, 23:23 Probation [2] - 2:10, 7:11 probation's [1] - 6:8 problem [4] - 14:12, 14:19, 14:24, 15:6 problems [2] - 24:21, 29:4 proceeding [1] - 33:11 proceedings [1] - 4:15 produce [3] - 7:15, 7:21, 8:10 produced [1] - 12:20 Produced [1] - 1:24 profit [1] - 11:24 profits [2] - 12:15, 16:17 promises [1] - 5:3 promote [1] - 32:1 proof [1] - 9:1 proper [1] - 4:9 properly [1] - 32:10 property [3] - 18:21, 19:15, 25:13 PROTASS [58] - 1:18, 2:7, 2:21, 3:17, 3:24, 4:1, 4:5, 4:7, 4:11, 4:17, 5:15, 5:17, 5:24, 6:17, 7:5, 7:14, 7:16, 8:2, 8:16, 8:20, 9:6, 9:8, 9:12, 9:15, 9:19, 9:23, 10:21, 11:1, 11:6, 11:8, 13:14, 14:6, 14:20, 15:13, 16:6, 16:12, 17:3, 17:15, 17:24, 18:11, 19:22, 19:25, 20:16, 20:19, 21:8, 21:20, 22:13, 22:19, 22:22, 23:5, 24:7, 24:16, 26:4, 27:22, 31:1, 31:4, 33:4, 33:9 Protass [2] - 2:7, 3:20 protect [2] - 29:3, 32:3 provision [1] - 14:15 PSR [5] - 6:1, 6:18, 6:23, 8:24, 20:4 psychiatric [1] - 24:21 public [2] - 29:3, 32:4 punishment [1] - 32:1 pursuant [5] - 12:3, 14:14, 15:19, 24:4, 29:14 Pursuant [1] - 21:24 put [1] - 28:13 putting [1] - 19:18	Q Queens [4] - 27:23, 27:24, 28:11, 32:17 quite [2] - 29:22, 29:23 quoting [1] - 16:22	resolution [1] - 6:1 respect [2] - 24:1, 32:1 respectfully [1] - 31:17 respond [1] - 31:1 responsibility [1] - 22:10 responsible [1] - 16:11 restitution [2] - 24:3, 24:8 result [2] - 27:8, 27:19 results [1] - 28:5 resurrected [1] - 13:11 return [1] - 12:16 RICO [2] - 8:22, 31:13 rid [1] - 19:9 rights [6] - 11:22, 11:23, 12:2, 15:24, 17:12, 25:17 rings [1] - 23:14 rise [1] - 30:6 risen [1] - 29:23 RMR [1] - 1:21 road [1] - 28:8 role [14] - 20:3, 20:5, 20:7, 20:14, 20:20, 20:25, 21:21, 22:7, 26:14, 26:25, 28:23, 30:22, 31:15 RONALD [1] - 1:21
	R raise [1] - 2:13 range [10] - 19:14, 23:2, 23:13, 23:16, 28:18, 28:20, 28:21, 29:16, 30:25, 32:20 rather [1] - 10:6 ray [1] - 28:3 rayed [1] - 28:1 rays [1] - 32:9 re [1] - 28:3 re-x-ray [1] - 28:3 read [3] - 3:6, 8:1, 24:15 ready [1] - 3:9 really [4] - 26:15, 26:19, 26:22, 31:12 reason [1] - 28:3 reasonably [1] - 27:5 reasons [2] - 9:24, 30:22 rebreak [1] - 28:9 recommend [1] - 18:13 recommendation [2] - 18:11, 19:11 recommended [1] - 18:10 record [2] - 27:11, 31:23 recording [1] - 4:6 refer [5] - 6:19, 7:3, 7:7, 7:8, 8:17 referring [2] - 8:9, 19:16 refers [1] - 16:23 reflected [1] - 20:8 reflects [1] - 9:23 regard [1] - 31:16 relate [1] - 6:21 related [1] - 10:19 relates [1] - 12:25 relating [1] - 31:11 relationship [1] - 13:19 release [2] - 27:16, 32:25 relevant [2] - 6:22, 13:12 remain [1] - 9:5 remaining [1] - 33:5 remains [1] - 9:7 repeated [1] - 13:16 report [6] - 3:6, 5:23, 7:17, 8:13, 11:20, 15:14 Reporter [2] - 1:21, 1:22 request [3] - 11:13, 18:12, 30:5 requested [2] - 26:5, 26:8 require [1] - 27:11 required [3] - 16:3, 32:2, 32:3 requires [1] - 28:16 resell [2] - 27:8, 27:9 reset [1] - 28:9	S sales [1] - 27:6 satisfied [1] - 3:14 satisfy [1] - 28:25 saw [1] - 14:20 schemes [1] - 30:7 sealed [3] - 3:23, 3:25, 4:2 seat [1] - 3:4 second [3] - 17:2, 17:3, 30:4 see [8] - 3:22, 14:11, 15:16, 27:18, 28:2, 28:10, 28:11, 32:9 seeking [1] - 4:4 sell [1] - 27:12 sensible [1] - 18:2 sent [1] - 7:11 sentence [15] - 6:24, 15:9, 26:8, 26:12, 28:20, 28:24, 29:6, 29:17, 29:18, 29:20, 30:23, 30:24, 31:18, 32:3 sentenced [2] - 3:9, 6:4 sentences [2] - 32:20, 32:23 sentencing [7] - 2:1, 10:1, 11:19, 12:8, 13:16, 32:20 Sentencing [1] - 33:11 separate [1] - 17:6 September [1] - 24:5 serious [1] - 31:22 seriousness [1] - 31:25 serve [1] - 29:2 served [6] - 26:9, 26:12, 26:13, 28:17, 28:24, 29:7 set [2] - 7:10, 11:17 setting [1] - 28:4 shall [1] - 18:9

<p>share [2] - 12:15, 16:17 shared [1] - 16:16 sharing [1] - 13:19 sheet [1] - 20:9 shifts [1] - 17:9 shortly [1] - 27:15 sides [1] - 4:9 significant [2] - 19:19, 27:6 significantly [1] - 27:24 simply [2] - 12:23, 14:7 Sindee [1] - 2:9 site [5] - 11:12, 15:24, 16:1, 26:17, 26:20 six [6] - 20:21, 26:7, 26:12, 28:17, 29:7, 31:18 six-month [1] - 26:7 six-point [1] - 20:21 small [1] - 8:16 so... [1] - 13:4 society [1] - 31:7 someone [1] - 29:4 someplace [1] - 13:24 somewhere [2] - 28:8, 28:20 sorry [1] - 7:5 Sorry [1] - 30:4 sought [1] - 24:3 special [2] - 24:13, 33:1 specific [1] - 22:6 Specific [1] - 32:2 spell [1] - 14:2 spent [1] - 27:13 stand [2] - 2:13, 20:24 start [1] - 27:14 state [2] - 2:18, 27:10 State [1] - 27:9 statement [2] - 4:18, 4:20 statements [1] - 32:21 Staten [4] - 18:8, 18:10, 18:19, 19:17 STATES [2] - 1:1, 1:3 States [2] - 1:10, 1:14 status [3] - 30:12, 30:13, 30:15 statutory [1] - 14:15 Stenographically [1] - 1:24 still [3] - 5:8, 26:9, 26:12 stricken [1] - 8:6 subject [1] - 24:13 submit [1] - 31:17 substantial [2] - 32:1, 32:22 substantively [1] - 31:12 successful [1] - 12:11 suffice [1] - 30:10 sufficient [2] - 13:13, 31:18 Suite [1] - 1:19 supposed [1] - 32:8 surgery [4] - 13:21, 13:22, 28:6, 28:12 suspect [1] - 28:12 Swear [1] - 2:12 swelling [1] - 27:24 sworn [1] - 2:15</p>	<p>sycophants [1] - 14:1 system [1] - 29:24</p> <p style="text-align: center;">T</p> <p>table [1] - 3:5 tally [1] - 20:8 tapes [4] - 11:2, 12:19, 12:21, 13:17 telephone [1] - 23:14 ten [1] - 28:21 term [1] - 32:2 terms [1] - 6:22 THE [178] - 2:6, 2:11, 2:12, 2:17, 2:19, 2:20, 2:23, 2:25, 3:1, 3:2, 3:3, 3:6, 3:8, 3:9, 3:10, 3:11, 3:12, 3:13, 3:15, 3:16, 3:18, 3:23, 3:25, 4:2, 4:6, 4:9, 4:13, 4:18, 4:21, 4:25, 5:1, 5:2, 5:3, 5:5, 5:6, 5:7, 5:8, 5:9, 5:10, 5:11, 5:12, 5:16, 5:18, 5:21, 5:22, 6:5, 6:9, 6:12, 6:16, 7:4, 7:15, 7:17, 8:1, 8:3, 8:7, 8:13, 8:19, 9:1, 9:4, 9:7, 9:9, 9:13, 9:18, 9:20, 10:3, 10:9, 10:13, 10:19, 10:24, 11:5, 11:7, 13:5, 13:12, 13:25, 14:8, 14:18, 14:21, 15:16, 15:20, 15:25, 16:4, 16:8, 16:10, 17:1, 17:12, 17:19, 18:1, 18:7, 18:8, 18:9, 18:13, 18:15, 18:16, 18:18, 18:19, 18:20, 18:22, 18:23, 18:24, 18:25, 19:1, 19:2, 19:3, 19:4, 19:5, 19:6, 19:7, 19:8, 19:10, 19:20, 19:24, 20:5, 20:8, 20:13, 20:18, 20:22, 21:1, 21:9, 21:13, 21:17, 21:21, 22:1, 22:3, 22:5, 22:10, 22:15, 22:20, 22:25, 23:4, 23:6, 23:9, 23:12, 23:18, 23:21, 23:25, 24:3, 24:6, 24:8, 24:10, 24:11, 24:12, 24:13, 24:20, 24:22, 24:23, 24:24, 24:25, 25:1, 25:2, 25:4, 25:5, 25:6, 25:7, 25:8, 25:9, 25:12, 25:13, 25:15, 25:16, 25:18, 25:19, 25:23, 26:1, 27:21, 29:8, 29:10, 29:11, 29:12, 29:13, 31:3, 31:21, 32:8, 32:11, 32:13, 32:15, 32:19, 33:2, 33:7 therefore [1] - 31:17 third [1] - 10:8 Thousand [1] - 18:24 threat [16] - 9:16, 10:7, 12:11, 12:14, 12:22, 12:25, 14:5, 14:6, 14:8, 14:25, 15:4, 21:9, 26:10, 31:7 threats [8] - 5:3, 9:21, 14:13, 14:16, 14:17, 14:21, 14:23, 15:5 three [5] - 6:13, 10:11, 22:11, 22:15, 28:23 Throughout [1] - 6:18 thumb [3] - 27:20, 27:22, 28:15 Today [1] - 26:7 today [1] - 27:17 TOLKIN [1] - 1:21 took [2] - 27:25, 32:9 training [1] - 32:4 Transcript [1] - 1:24 transcript [1] - 4:22</p>	<p>Transcription [1] - 1:25 transferred [1] - 12:2 treated [1] - 24:21 treatment [3] - 28:14, 28:16, 32:5 tremendous [1] - 30:17 trial [3] - 9:4, 9:5, 9:6 trouble [1] - 14:10 truth [1] - 2:15 truthful [1] - 5:1 turns [1] - 26:17 two [21] - 9:16, 12:22, 13:10, 15:1, 15:8, 16:13, 17:6, 17:10, 20:20, 20:25, 21:10, 21:11, 21:25, 22:1, 22:5, 26:10, 26:22, 28:5, 28:10, 31:10, 31:12 two-point [1] - 12:22</p> <p style="text-align: center;">U</p> <p>U.S [3] - 1:4, 1:16, 2:10 U.S.A [3] - 2:2, 3:12, 27:4 ultimately [3] - 17:12, 30:17, 31:19 under [6] - 6:7, 13:6, 14:14, 14:22, 15:5, 15:9 Under [1] - 25:21 Unfortunately [1] - 27:7 UNITED [2] - 1:1, 1:3 United [2] - 1:10, 1:14 unresolved [1] - 3:18 up [6] - 2:13, 3:3, 14:4, 17:9, 19:18, 21:17</p> <p style="text-align: center;">V</p> <p>Valero [8] - 11:24, 12:2, 12:6, 12:11, 12:18, 16:15, 16:16, 16:18 validity [1] - 14:24 versus [1] - 2:2 victim [2] - 4:19, 30:18 victim's [1] - 4:18 video [1] - 4:6 view [6] - 6:5, 6:9, 9:22, 9:23, 21:23, 31:25 vocational [1] - 32:4 voice [1] - 12:20 voluntary [1] - 5:6</p> <p style="text-align: center;">W</p> <p>wants [3] - 21:10, 21:14 warranted [2] - 29:19, 29:21 wearing [1] - 27:19 week [2] - 7:12 weeks [1] - 28:10 weight [1] - 32:22 WEINSTEIN [1] - 1:10 well-written [1] - 6:8 whatsoever [3] - 12:18, 26:18, 27:2</p>
--	---	---

whereby [1] - 11:21
wife [2] - 2:22, 18:20
wine [2] - 27:5, 27:9
wish [2] - 5:8, 5:22
witness [5] - 13:15, 13:20, 15:23,
16:16, 16:19
witnesses [1] - 5:19
word [2] - 12:10, 14:2
wording [1] - 8:5
words [1] - 17:18
written [1] - 6:8

X

x-rayed [1] - 28:1

Y

year [1] - 28:19
years [3] - 27:13, 30:8, 32:25
YORK [1] - 1:1
York [6] - 1:5, 1:15, 1:19, 1:23, 27:9
young [2] - 28:23, 29:22
yourself [1] - 5:18

Z

zero [1] - 21:14